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FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Calling Party Pays Service Option in)
the Commercial Mobile Radio Services)

WT Docket No. 97-207 **DOCKET FILE COPY ORIGINAL**

COMMENTS OF GTE SERVICE CORPORATION

GTE Service Corporation and its telephone
and wireless companies

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TABLE OF CONTENTS

| | <u>PAGE</u> |
|--|-------------|
| Summary | iii |
| I. Discussion | 2 |
| A. Preliminary Issues | 2 |
| 1. How CPP Works | 2 |
| 2. CPP Is a Commercial Mobile Radio Service | 5 |
| B. GTE's Experience With CPP | 8 |
| C. The Marketplace Not the Commission Should Determine Whether CMRS Providers Offer Calling Party Pays..... | 9 |
| D. Barriers to CPP | 12 |
| E. FCC Jurisdiction to Remove Barriers | 17 |
| 1. The Arizona Decision | 18 |
| 2. Unbundling and Interconnection | 21 |
| B. Conclusion | 24 |

SUMMARY

GTE supports the FCC's inquiry into calling party pays ("CPP"). Before determining what, if any, actions the FCC should take to facilitate CPP and whether the FCC has the authority to take any such action, it is essential that the FCC understand how CPP works and how CPP should be classified within the regulatory framework, i.e., either as a LEC or CMRS service.

CPP can be provisioned using two distinct types of network architectures: switch-based CPP and advanced intelligent network ("AIN")-based CPP. In general, AIN-based systems are more customer friendly and allow the CMRS provider more flexibility in provisioning and billing for CPP calls.

How CPP is classified is important for assessing the extent to which the states, the FCC, or both have regulatory authority over CPP. CPP meets the statutory and FCC definition of CMRS. Moreover, because the principal service being provided and billed for is completing a call on a CMRS network, the FCC should rule that CPP is CMRS.

GTE does not believe that the Commission should approach the CPP proceeding as a means of promoting wireless competition for traditional wireline LEC services. The Commission's inquiry in this proceeding should focus on the benefits CPP might provide to the CMRS market, not benefits that might accrue to the LEC market.

Approaching the CPP proceeding as a means of jump starting CMRS/LEC competition is not appropriate for a number of reasons. First, there is no indication that

CPP will make fixed wireless services more attractive to consumers as an alternative to traditional LEC services. Second, at present, fixed wireless entry into the local exchange market is not part of most CMRS carriers' business plans. Third, GTE is concerned that in an effort to promote fixed wireless services as competitors in the local exchange market, the FCC may require CMRS providers to offer CPP rather than allowing market forces to work. Finally, offering CPP requires CMRS providers to incur certain costs. The decision to incur these costs today is a market-based decision and should remain as such.

Rather than taking steps to require that CPP be offered, the Commission's efforts should focus on removing barriers that prevent CMRS providers from offering CPP. In GTE's experience with CPP, it has come across a variety of barriers. These include: state regulation, the inability of CMRS providers to bill and collect for calls placed from certain locations ("leakage"), customer perception, and the lack of industry standards.

While technology will likely address some of these barriers, particularly leakage and customer perception, there are actions the FCC can and should take to remove barriers to CPP. In particular, the FCC should (1) preempt state rate and entry regulation of CPP; (2) declare that CPP is a telecommunications service (so that more LECs will agree to bill for CPP); and (3) endorse industry standards-setting initiatives.

Whether the FCC has jurisdiction to take these actions depends largely on how CPP is classified. GTE believes that dicta in the Commission's *Arizona Decision*, incorrectly stated that CPP is a billing and collection service. GTE believes that

classification was incorrect. The FCC should rule that CPP is CMRS, and, as such, that the FCC has jurisdiction to preempt state rate and entry regulation.

Finally, the FCC should resist the efforts of some parties to embroil the CPP proceeding in the debate concerning the FCC's jurisdiction over LEC-CMRS interconnection or unbundled network elements ("UNEs"). None of the barriers to CPP involve interconnection or UNEs. Accordingly, the FCC should avoid letting the CPP proceeding get bogged down in the debate over those issues.

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COMMENTS OF GTE SERVICE CORPORATION

GTE Service Corporation and its telephone and wireless companies ("GTE") hereby submits its comments in response to the *Notice of Inquiry* issued by the Federal Communications Commission ("FCC" or "Commission") in the above-captioned proceeding.¹ The Commission seeks comment in the *NOI* on a number of issues relating to calling party pays ("CPP"). In particular, the FCC hopes to establish a record in this proceeding for determining whether wider availability of CPP would enable commercial mobile radio services ("CMRS") providers to compete more readily with wireline services provided by local exchange carriers ("LECs"), and whether there are actions that the Commission could take to promote the wider availability of CPP.

GTE supports the Commission's inquiry into CPP. GTE notes that varying forms of CPP are being offered in a number of jurisdictions across the nation. These offerings, in effect, are marketplace experiments with CPP, enabling CMRS providers to evaluate the costs and benefits of CPP. GTE believes that market principles should determine whether CMRS providers offer CPP. GTE urges the FCC to resist the

¹ Calling Party Pays Service Option in the Commercial Mobile Radio Services, *Notice of Inquiry*, WT Docket No. 97-207 (released October 23, 1997) (hereinafter "*NOI*").

temptation to mandate CPP out of a desire to create local exchange competition. In that spirit, therefore, GTE urges the FCC not to adopt any rules that would require CMRS providers to offer a CPP option. Rather, the FCC's role in the CPP experiment should be, within its jurisdictional limits, to remove barriers that prevent CPP offerings.

I. Discussion

A. Preliminary Issues

Before determining what, if any, actions the FCC should take to facilitate CPP and whether the FCC has the authority to take any such action, it is essential that the FCC understand how CPP works and how CPP should be classified within the regulatory framework, i.e., either as a LEC or CMRS service.

1. How CPP Works

CPP is a means of providing and billing CMRS service. CPP is offered as a service option to CMRS subscribers. While traditional CMRS service imposes the obligation to pay for calls on the CMRS subscriber regardless of who originates the call, if CPP is selected, calls originating from others will be billed to the calling party. Where CPP is available, the calling party will receive some form of notice that the called number is a CPP number. At that point, the calling party may elect not to place the call or not to proceed with the call (depending on how CPP is provisioned). In either case, no charges are incurred by the caller. If, however, the calling party elects to proceed with the call, that party becomes the CMRS customer for that call.

While CPP can be provisioned in different ways, some generalizations can be made. First, for CPP to work, at some point in the network, the call must be identified as a call made to a CPP number ("call identification"). Second, the CMRS provider

must establish a means of identifying the party placing the call and billing that party for the charges incurred ("call billing").

Calling Party Pays can be provisioned using two distinctly different methodologies:

Switched-based

Switch-based CPP requires the CMRS subscriber to have a unique telephone number with a specific NPA-NXX dedicated to CPP. When the calling party calls this CMRS subscriber, the central office or access tandem recognizes the CPP NPA-NXX and creates a billing record against the calling party. Similarly, the CMRS switch recognizes the CPP NPA-NXX and terminates the call without creating a billing record against the CMRS subscriber.

There are several disadvantages to the switch-based methodology. The most significant of these is that excessive billing "leakage" is likely to occur. The term "leakage" refers to the inability of CMRS providers to collect the charges for some calls placed to CMRS CPP subscribers. Calls from pay telephones, hotel/motel phones, and calls to and from air-ground mobile phones are examples of calls for which there is no billable account available. Another serious impediment to CPP is the requirement that existing CMRS subscribers would have to change their current number for the dedicated CPP NPA-NXX.

Advanced Intelligent Network (AIN)-based

The AIN-based methodology is the most flexible solution with the greatest opportunity to create multiple billing options. AIN does not require any number changes by the CMRS subscriber. When the calling party calls a CMRS number, the originating

network delivers the call to the CMRS network just as it does today. At this point the CMRS provider determines how the CPP call will be processed.

One significant advantage to using AIN methodology is the CMRS provider's ability to "look up" all of the information necessary to handle the CPP call using intelligent network technology. The intelligent network can look up the called number and decide if it subscribes to CPP. The intelligent network can recognize if a calling party number is available. The intelligent network can offer billing options to the calling party, including the option to not process the call.

As noted above, another advantage AIN-based CPP provides is that the CMRS provider can determine how CPP calls are processed. Most CMRS providers can purchase intelligent network capability from a third party vendor such as an ILEC, CLEC, IXC, or an enhanced service provider. Alternatively, the CMRS provider can enhance its own network to provide intelligent network functionality. Using AIN, the CMRS provider can establish CPP for air time only, as is commonly the case today, or it can include toll and roaming charges as well.

To better illustrate how an AIN-based CPP call could be handled, it is helpful to understand how a typical call sequence would occur. First, a call is placed to a CMRS subscriber. At this point, the calling party may not realize that the dialed party is a CMRS subscriber or that the subscriber has chosen CPP. Second, the originating network delivers the call to the CMRS network as it does today. The originating network most likely will also deliver the calling party number, subject to the technical limitations of the network. Third, the CMRS network has the option to screen the called number for CPP in its network or it may hand the call to an enhanced service provider

to do the screening. Fourth, if the called number is not CPP, the call is routed to the subscriber and normal billing occurs. If the called number is CPP, the call is routed to an intelligent network resource (either CMRS or third party) for processing.

The intelligent network, upon receiving the call, checks to see if a calling party number has been provided. If not, the CMRS provider has the option of defaulting the call to its customer for normal billing or providing the calling party with alternate billing options like calling card or credit card. If the calling party number is provided, the intelligent network resource provides the appropriate preamble to notify the calling customer that this is a CPP call, may provide rate information, and provides a menu of billing options from which the caller can select. Once the calling customer selects a billing option, the intelligent network resource launches a query to an appropriate data base (e.g., line information data base, credit card verification data base, billing number and address data base) to gather data necessary to create a billing record. The intelligent network resource then formats a billable record and, at the option of the CMRS provider, presents the bill record to the end user directly, to the originating customer's service provider for inclusion on their end user bills, or to a billing clearinghouse for presentation to the originating service provider.

2. CPP Is a Commercial Mobile Radio Service

Although the FCC did not squarely raise the issue in the *NOI*, there has been some debate regarding whether CPP is a LEC or a CMRS service. The classification of CPP is important for assessing the extent to which the states, the FCC, or both have regulatory authority over CPP. For this reason, GTE believes the FCC must determine whether CPP is a LEC or a CMRS service in the context of this proceeding.

The FCC should rule that CPP is a CMRS service. The FCC's Rules and the Communications Act define CMRS as a mobile service that is (1) provided for profit; (2) an interconnected service; and (3) available to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public.² A mobile service is defined as a radio communications service carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves.³ CPP is CMRS because the principal service that is being provided and billed for is completing a call from either a mobile or land station to a CMRS subscriber using a CMRS network.⁴ Given that CMRS networks are interconnected to the public switched telephone network and CMRS service is generally available to the public, the FCC has considered completing calls on CMRS networks to be CMRS ever since the CMRS classification was created. The fact that the calling party is being billed for the call does not affect the nature of the call itself nor whether the call meets the CMRS definition. Accordingly, CPP must be considered a CMRS service.

² 47 C.F.R. § 20.3; 47 U.S.C. § 332(d)(1).

³ 47 C.F.R. § 20.3; 47 U.S.C. § 153(27).

⁴ GTE notes, in response to a question raised in the *NOI*, however, that reciprocal compensation interconnection arrangements between LECs and CMRS providers do not obviate the need for CPP. *NOI* at 5 (¶ 9). Reciprocal compensation is designed to recoup the incremental cost of transporting and switching a call completed on a CMRS network. It does not provide any recovery for investment in plant or the operational costs of running a CMRS business. Currently, CMRS pricing is designed to recover these other costs through air time rates charged both for originating and terminating a CMRS call. In order to forgo collecting charges for terminating calls, air time charges for originating calls would likely have to be increased.

The Commission has never classified a service based on how the service is billed. For example, it is common practice for LEC bills to include charges for interexchange service provided by a long distance company. The fact that the LEC bills and collects the charges for such calls from LEC customers does not change the classification of service from interexchange to local.

The fact that LEC networks and (possibly) LEC services may be used to provide CPP also does not make CPP a LEC service. To be sure, most CPP calls would not be feasible without some form of interconnection (direct or indirect) between the CMRS provider terminating the call and a LEC network. In addition, depending on how CPP is provisioned, the CMRS provider may choose to subscribe to LEC AIN and/or billing services in its CPP offering. Neither the use of LEC networks nor the billing of LEC customers, however, makes CPP a LEC service. The fact that CMRS providers interconnect with LEC networks and may rely on LEC network interconnection to route calls from the calling party to the CMRS network does not make CPP a LEC service. Indeed, virtually every common carrier communications service depends on interconnection with local exchange networks to route traffic. The fact that a CMRS provider might choose to purchase additional services from LECs to provision CPP also does not make CPP a LEC service. As indicated above, while these services may be purchased from a LEC, they might also be purchased from a third party vendor or implemented by the CMRS provider. Accordingly, the fact that CPP might be provisioned using services or functionalities purchased from a LEC does not make CPP a LEC service.

B. GTE's Experience With CPP

The NOI seeks information regarding carriers' experiences offering CPP.⁵

Although GTE's local exchange operations support CMRS providers' CPP offerings in a number of markets, GTE's CMRS provider affiliates offer CPP only in the State of Hawaii.

In Hawaii, GTE Wireless offers CPP to its cellular subscribers in the Oahu MSA. At the time the service was initially offered, wireless services were fully regulated by the Hawaii Public Utilities Commission ("PUC"). Consequently, the service was offered after extensive hearings before the PUC, and under specific conditions prescribed by the Commission.

The service in Hawaii has never been particularly successful. GTE attributes this lack of success to a variety of factors. For example, CPP in Hawaii has been provided using the switch-based system described above. As a result, CPP subscribers have not been able to take advantage of some of the specialized features AIN-based systems allow that make CPP more attractive to subscribers.

In addition, CPP in Hawaii has suffered from customer perception problems. Market research conducted by GTE revealed that customers who use their cellular phones primarily for business fear that subscribing to CPP will discourage clients from calling. Non-business subscribers are concerned that calling parties, particularly family and friends, will deem the subscriber "cheap" if the caller must pay for air time.

⁵ NOI at 4 (¶ 7).

Finally, leakage has been a problem in Hawaii. GTE Wireless is unable to bill CPP calls placed from pay telephones, other wireless phones, PBXs, landline phones outside Hawaii, and other points of origination. As a result, neither the calling nor called party is billed, and the air time is free. This excessive leakage has dampened GTE Wireless' enthusiasm for CPP in Hawaii.

Because the service has not been particularly successful in Hawaii, GTE does not have enough data to determine what effect, if any, CPP might have on traffic flows, subscribership, digital service, etc.

GTE's cellular subscribers in Hawaii that elect CPP pay \$5.00 per month (above and beyond monthly access fees) for CPP. Individuals calling a CPP customer pay a flat air time rate of fifty cents per minute.

The Hawaii PUC requires GTE to provide several types of customer notification relative to CPP, including: direct mail notice, preamble, bill inserts in Hawaiian Telephone customer bills, and a special dialing pattern (1+NPA NXX). The special dialing pattern means that calls placed to CPP CMRS subscribers require the dialing of 11 digits, compared to 7 digits for all other non-toll calls. The Hawaii PUC has decided that this dialing requirement serves as additional notice to the caller that a charge will be incurred for completing the call.

C. The Marketplace Not the Commission Should Determine Whether CMRS Providers Offer Calling Party Pays

GTE is a proponent of local exchange competition. Consistent with that policy, GTE supports competitive entry into local exchange markets by all telecommunications providers, including CMRS, so long as such entry is supported by market principles.

GTE is concerned, however, that the FCC is approaching its CPP proceeding from the perspective of trying to promote fixed wireless services as a competitive substitute for wireline local exchange service.⁶ GTE does not believe that local exchange competition should be the impetus for the FCC's examination of CPP. CPP is and should be regarded as an alternative CMRS pricing mechanism that might increase CMRS network use. As such, CPP holds the potential to produce benefits for CMRS customers and carriers. The Commission's inquiry in this proceeding should focus on the benefits CPP might provide to the CMRS market, not benefits that might accrue to the LEC market.

Approaching the CPP proceeding as a means of jump starting CMRS/LEC competition is not appropriate for a number of reasons. First, there is no indication that CPP will make fixed wireless services more attractive to consumers as an alternative to traditional LEC services. As the Commission notes in the *NOI*, several CMRS providers have begun experimenting with CPP.⁷ Those experiments, however, provide little evidence that CPP will make LEC/CMRS competition more vigorous. Nonetheless, GTE expects that the CMRS industry will continue to explore CPP both as a means of increasing network use and as a possible means of pricing fixed wireless services.

Second, at present, fixed wireless entry into the local exchange market is not part of most CMRS carriers' business plans. Most wireless networks were designed

⁶ *NOI* at 1-2 (¶ 1).

⁷ In addition, CMRS providers are employing other pricing options designed to stimulate network use. GTE, for example, offers "first minute free," "bulk allocated minutes," and "peak/off-peak" pricing as means of stimulating network use.

primarily to serve portable or mobile customers. In order to adequately provide fixed wireless services as a competitive alternative to traditional local exchange services, a number of costly network configuration and technology changes would likely have to be implemented. Rather than taking steps to provide fixed wireless services, GTE is focusing its wireless business plans primarily on serving the still-growing traditional mobile and other wireless services market. Thus, GTE's cellular licensees are focused primarily on competing with nascent personal communications service ("PCS") providers. Likewise, GTE's PCS licensees are focused on building their networks and competing with incumbent cellular and other PCS providers. GTE opposes any effort by the FCC to force CMRS providers to re-focus their business plans.

Third, GTE is concerned that in an effort to promote fixed wireless services as competitors in the local exchange market, the FCC may require CMRS providers to offer CPP. GTE strongly opposes any such requirement. GTE believes local competition should develop in accordance with market principles. Likewise, GTE believes that market principles rather than regulatory fiat should determine when and if CMRS providers offer CPP. Given the potential customer base and revenues available for entities able to provide an economically viable local exchange service, CMRS providers already have a market-based incentive to develop and offer fixed wireless services in the local exchange market. As noted above, however, CMRS providers' ability to offer competitive local exchange services depends primarily on factors such as cost, technology, and quality of service. Thus, even if the FCC did mandate CPP, such action would not likely affect LEC-CMRS competition.

In addition, offering CPP requires CMRS providers to incur certain costs. These include the costs of arranging for call billing and collection, and either upgrading or in some cases replacing network facilities or contracting for some form of call identification. The decision to incur these costs is a market-based decision that depends upon an evaluation of the benefits that may be provided by CPP weighed against the costs. The FCC should not substitute regulation for market-based decisionmaking, especially in the case of CPP, where the benefits the Commission hopes to achieve are speculative at best.

D. Barriers to CPP

While GTE opposes mandatory CPP, GTE believes the FCC can assist CMRS provider efforts to provide CPP. Rather than taking steps to require CMRS providers to offer CPP to customers, however, the Commission's efforts should focus on removing barriers that prevent CMRS providers from offering a CPP option.

In the *NOI*, the Commission asks commenters to identify the specific technical, regulatory, or economic barriers that exist with respect to CPP and the actions the Commission should take to remove these barriers.⁸ In GTE's experience with CPP, it has come across a variety of barriers. First and foremost among these is the existence of state measures that preclude CPP or severely impair a carrier's ability to offer CPP. For example, in California, the Public Utilities Commission ("CPUC") has generally prohibited CMRS providers from offering CPP. Recently, seven years after enacting its prohibition, the CPUC allowed a limited market trial of CPP by AirTouch Cellular. In

⁸ *NOI* at 4 (¶ 8).

doing so, the CPUC imposed a number of conditions and requirements on the CMRS provider.⁹ These actions have effectively prohibited the widespread offering of CPP in California. A number of other state regulatory agencies have asserted jurisdiction over CPP and either prohibited or delayed its offering, or imposed a number of conditions on CMRS providers.¹⁰

GTE believes that the Commission can and should take action to prohibit state regulatory agencies from erecting barriers to CPP. As discussed below, GTE believes that such action is justified under Sections 332(c)(3) and 253(d) of the Communications Act ("the Act").

A second barrier to providing CPP is leakage. Leakage results from a number of factors. For example, as CTIA notes, most calls originated from coin phones, hotel or motel phones, other wireless phones, interexchange carrier networks, or calling card or credit card-billed calls cannot be collected by the CMRS provider.¹¹ In addition, CMRS providers may not be able to collect for calls originated on some LEC networks. For example, if a call originates on the network of a LEC other than the LEC with which the CMRS provider has a CPP arrangement, the originating LEC may refuse to bill for the call.

⁹ See "The Who, What and Why of 'Calling Party Pays,'" A CTIA Service Report, July 4, 1997 (hereinafter "CTIA White Paper") at 17.

¹⁰ For example, the Oregon Public Utilities Commission has rejected a US West plan to offer CPP. While the Oregon Commission does not regulate cellular service, it has asserted jurisdiction over CPP offerings within the state.

¹¹ CTIA White Paper at Executive Summary.

Leakage is being addressed in a number of different ways. First, many leakage problems are technical by nature. The industry is working towards developing technical solutions to these problems. For example, the deployment of SS7 and associated data links in CMRS networks will better enable CMRS providers to receive and use information about the calling party. With this information, CMRS providers can identify the call as originating from an uncollectable source and require a credit card or calling card number to complete the call. In addition, any leakage that cannot be resolved through technological, negotiated, or other means could still be collected from the CMRS customer, provided that the customer contract makes clear that the CPP customer will be liable for uncollectable bills.

The FCC may be able to help reduce leakage in one way.¹² GTE has taken the position that CPP is a telecommunications service (just as long distance service and operator assisted services are telecommunications services) and that it is in the public interest for all telecommunications carriers to support billing for CPP just as they support billing for other telecommunications services. Some LECs, however, will not bill their end-users for calls placed to CPP customers unless the LEC has a CPP arrangement with the CMRS provider. These LECs may believe that CPP is a billing

¹² Being that many of problems associated with CPP leakage have to do with billing and collection – a deregulated service – there is likely very little the FCC could do to help in this regard.

and collection service rather than a telecommunications service.¹³ Moreover, these LECs apparently do not recognize that CPP can benefit both wireline and CMRS subscribers.

GTE believes that CPP is a telecommunications service and should be included in telecommunications carriers' bills. As discussed above, GTE believes that CPP is a CMRS service. Although CPP, like most services, has a billing component, the service being billed is completing a call on a CMRS network. GTE also believes that all broadband CMRS satisfies the statutory definition of "telecommunications service."¹⁴ If the Commission were to clarify that CPP is a CMRS service, and, as such, that CPP is a telecommunications service, then more LECs might be willing to bill for CPP calls. In this way, the FCC may help CMRS providers address the leakage problem.

A third barrier to CPP is customer perception. In particular, as discussed above, market research conducted by GTE in Hawaii has revealed that many CMRS customers elect not to subscribe to CPP based on how these customers believed they would be perceived by calling parties. Thus, business subscribers may not want

¹³ This opinion may be bolstered by dicta in the Commission's decision in the *Petition of Arizona Corporation Commission to Extend State Authority Over Rate and Entry Regulation of All Commercial Mobile Radio Services. Report and Order and Order on Reconsideration*, PR Docket No. 94-104, GN Docket No. 93-252, 10 FCC Rcd 7824 (1995) (hereinafter "*Arizona Decision*"). The *Arizona Decision* is discussed below.

¹⁴ The Communications Act defines "telecommunications service" as "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used." 47 U.S.C. § 153 (46). The Act defines CMRS as "any mobile service . . . that is provided for profit and makes interconnected service available (A) to the public or (B) to such classes of eligible users as to be effectively available to a substantial portion of the public . . ." 47 U.S.C. § 332(d)(1).

customers having to pay for inbound calls and residential subscribers apparently feel that callers will think less of them for subscribing to a service that makes the caller pay.

Like leakage, the customer perception problem is largely addressable through technological improvements. GTE's AIN-based CPP product, for example, offers three "Advanced Subscriber Features," enabling the CMRS subscriber to effectively disable CPP for certain callers. The first option, known as "Selective Call Acceptance List," enables the CMRS subscriber to select 10 to 20 phone numbers. These numbers are placed in a subscriber file, and any time a incoming is received from one of the listed numbers, the call is completed and billed to the CMRS subscriber. The second option is "Caller Access Code Override." This option enables the CMRS subscriber to give a pin-number to callers of the subscriber's choosing. When a call is placed using the pin-number, the CMRS subscriber rather than the caller is billed. The third option is the "Enable/Disable CPP" option. This option allows the CMRS subscriber to turn CPP on or off at their discretion.

Another means by which the customer perception problem will be diminished is through the proliferation of CPP. The more CMRS subscribers use CPP, the more calling parties will accept CPP and erode any stigma that currently attaches to those who elect CPP. Given that technology and use will eventually reduce or eliminate this barrier, there is no action for the FCC to take.

Finally, GTE believes that the lack of telecommunications industry standards relating to CPP is a barrier to widespread offering of a CPP option. CPP is a service that has been developed independently by a number of different CMRS providers. Thus, as CTIA indicates, there are a number of different ways carriers offering CPP

provision the service.¹⁵ In addition, state regulators have approached CPP in a variety of ways. In particular, state agencies have varying requirements with respect to how to ensure the calling party knows it will be billed for calls completed to certain CMRS customers.

GTE believes that industry standards should be developed that will promote uniform nationwide CPP offerings. Industry standards adopted must be careful not to impede either a carrier's ability to decide whether to offer CPP or to determine how CPP is provisioned. GTE believes that the list of issues considered in a standards setting initiative, therefore, should include:

1. A standard preamble message to be heard by the calling party;
2. Standard payment options;
3. Standards for handling calls across state boundaries when the CMRS provider serves adjacent states; and
4. Standard bill dispute resolution procedures.

The only action GTE requests from the FCC with respect to a standards setting initiative is that the FCC endorse a standards-setting effort for CPP. As discussed below, GTE believes the FCC's ability to impose terms and conditions under which CPP may be offered is limited. As such, GTE does not believe the FCC can adopt the standards that are created or force state regulatory agencies to adopt them.

E. FCC Jurisdiction to Remove Barriers

As noted throughout this document, GTE endorses an FCC policy that will enable market forces to dictate when and if CMRS providers offer CPP. GTE believes

¹⁵ CTIA White Paper at 2-5.

only limited FCC action is required to facilitate CPP offerings. GTE believes that the FCC has jurisdiction to take the actions requested above to eliminate barriers to CPP. With respect to classifying CPP as a CMRS service and endorsing industry standards setting, GTE does not believe there is any question regarding the FCC's authority to act.

1. The Arizona Decision

Significant questions do exist, however, regarding the FCC's authority to regulate CPP in general, and to preempt state regulatory action in particular. In the *NOI*, the Commission notes that in the *Arizona Decision*, it stated that CPP is a billing practice that may be regulated by a state as a term and condition under which service is provided.¹⁶ GTE believes that the FCC's characterization of CPP as a billing service in dicta in the *Arizona Decision* was incorrect. As discussed above, GTE believes that the Commission should rule that CPP is a CMRS service.

In the *Arizona Decision*, the FCC determined that the Arizona Corporation Commission ("ACC") had not met the Section 332(c)(3) burden necessary to retain regulatory jurisdiction over CMRS rates. The ACC had argued in that proceeding that its regulation of CPP was evidence that continued rate regulation of CMRS was warranted. In dismissing this argument, the FCC characterized CPP as "'calling party pays' customer billing." It then stated that under the Act, "billing practices are

¹⁶ *NOI* at 11 (¶ 28).

considered 'other terms and conditions' of CMRS offerings not rates, and the ACC retains authority to regulate such practices."¹⁷

The *Arizona Decision* characterization of CPP should not be applied in this proceeding for several reasons. First, GTE notes that because the characterization of CPP was not part of the final rule decided in the *Arizona Decision*, the language is dicta that is not binding on the FCC in subsequent decisions or on the industry.

Second, the *Arizona Decision* characterization should not be applied because it is apparent from the FCC's order that the Commission was not focused on CPP. Rather, the FCC was only interested in determining whether continued state regulation of CMRS rates was warranted. The FCC did not have the record and did not undertake to perform the type of analysis necessary to make any conclusive ruling with respect to the classification of CPP.

Third, the characterization of CPP in the *Arizona Decision*, in GTE's opinion, is incorrect. As GTE demonstrated above, CPP is CMRS. Although like many services, CPP has a billing and collection component, this component does not make CPP a billing and collection service. Since CPP is a means of providing air time on CMRS networks, it should properly be classified as CMRS.

Because CPP is properly classified as CMRS, the FCC must look to Section 332(c)(3) of the Act to determine the extent of FCC jurisdiction to regulate CPP.¹⁸ Section 332(c)(3) establishes that "no State or local government shall have any

¹⁷ *Arizona Decision*, 10 FCC Rcd at 7837.

¹⁸ 47 U.S.C. § 332(c)(3).

authority to regulate the entry of or the rates charged by any commercial mobile service . . . , except that this paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile services.”¹⁹ Based upon this language, then, it is clear that a state may not adopt any measure that regulates entry as a CPP provider. Preemption of state-erected barriers to entry is also justified under Section 253 of the Act. Section 253(a) prohibits state or local government action that prohibits or has the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service. Section 253(d) authorizes the FCC to preempt any state or local requirement that violates Section 253(a).²⁰ Accordingly, GTE believes that the FCC can and should act in this proceeding to eliminate barriers erected by state regulatory agencies that prevent or have the effect of preventing CMRS providers from offering CPP.

GTE also believes that the FCC has the authority under Section 332(c)(3) to rule that states may not regulate the rates charged by CMRS providers for CPP.²¹ GTE has already experienced state CPP rate regulation first hand. In Hawaii, as prerequisite to obtaining Hawaii PUC authority to provide CPP, GTE was ordered not to modify rates except upon 30 days notice and with Hawaii PUC approval. In addition, GTE’s cellular

¹⁹ *Id.* While subsequent language in this section creates a state’s right to petition the FCC for the authority to continue to regulate CMRS rates, no such petition has been successful. See, e.g., *Arizona Decision*.

²⁰ 47 U.S.C. §§ 253(a) and (d).

²¹ In referring to the rates charged by CMRS providers for CPP, GTE refers both to the rates charged to CMRS subscribers for CPP *and* the rates charged to the caller for completing calls to CPP subscribers.